

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Sec 246 Standards Order

Order establishing standards and procedures for )  
issuance of a certificate of public good for a )  
temporary meteorological station pursuant to )  
30 V.S.A. § 246 )

Order entered: 3/9/2010

**ORDER ESTABLISHING STANDARDS AND PROCEDURES**

**INTRODUCTION**

Pursuant to 30 V.S.A. § 246(a), the Public Service Board ("Board") is required to "establish by rule or order standards and procedures governing application for, issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title." Further, pursuant to § 246(c), in developing the standards and procedures, the Board "shall develop a simple application form" and "seek to simplify the application and review process, as appropriate, in conformance with this section."

In order to implement the statute, on June 12, 2009, the Board circulated a draft Order and an application form ("Application") setting forth standards and procedures for the application and issuance of a certificate of public good ("CPG") for temporary meteorological stations, and requested comments.

The Board received comments and requests for clarification regarding the draft procedures from the Vermont Department of Public Service ("Department"); Renewable Energy Vermont ("REV"); and Green Mountain Power Corporation ("GMP").<sup>1</sup> The substantive comments are addressed below under the applicable sections of the Order and Application. We have also incorporated a number of non-substantive edits suggested by the commenters.

---

1. The Vermont Agency of Natural Resources filed a letter with the Board stating that it concurs with the comments filed by the Department in this matter.

## **DISCUSSION**

### **Conditional Waiver of Section 248 Criteria**

Pursuant to 30 V.S.A. § 246(c)(3), the Board "[m]ay waive the requirements of section 248 of this title that are not applicable to meteorological stations . . . ." Section 246(c)(3) also states that the Board "shall not waive review regarding whether construction will have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment, and the public health and safety." The draft Order and the Application require applicants to address each of the criteria cited under § 246(c)(3). All other criteria under § 248 are conditionally waived.

The Department argues that because certain other criteria under § 248 could be applicable to the review of meteorological stations, these criteria should not be waived. The Department contends that criteria under § 248(b) regarding orderly development of the region, outstanding resource waters, and those criteria specified in 10 V.S.A. § 1424a(d) and 6086(a)(1) through (8) and (9)(K), are relevant to the review of these projects and, therefore, should not be waived.

REV argues that pursuant to § 246(c)(3) the Board has broad discretion to waive criteria under § 248 and that the waiver should be expanded to include various other criteria, including hearing and notice provisions, because they are inapplicable to the review of meteorological stations. REV also contends that the waiver of review criteria should be unconditional.

The Board's conditional waiver of § 248 criteria is based on the limited potential for impact presented by the majority of temporary meteorological stations under those criteria. The waiver should be conditional, not unconditional, to allow for review of a particular project if it was found to raise issues with respect to the conditionally waived criteria. We also conclude that expanding the non-waived criteria, as proposed by the Department, will gather information that may prove useful in reviewing particular projects. Because the additional criteria may not be applicable to the majority of projects, these requirements should not prove unduly burdensome for applicants or unnecessarily impede the expeditious review of these projects. Therefore, we have revised this section of the Order and Application accordingly.

### Notice Requirements

The draft Order requires that applicants provide 45-days' advance notice of an application for a meteorological station to specific entities. REV argues that the advance notice is not necessary given the limited and temporary nature of the impacts of these projects. REV further contends that this requirement "will materially delay" the permitting process for wind generation projects and, therefore, should be deleted.

Providing advance notice of a project to potentially affected parties will provide an opportunity for those parties to raise concerns regarding the project and allow the applicant time to address those concerns before the petition is filed with the Board. This, in turn, may allow for a more expedient review process once the petition is filed. However, in order to avoid delaying the review of projects that in many cases will not raise concerns, we conclude that revising the notice period from 45 to 30 days is appropriate and have modified the Order accordingly.

### Aesthetic Evaluation

REV argues that the Order should establish a rebuttable presumption that meteorological stations under 200 feet in height do not have an undue adverse impact on aesthetics or the scenic and natural beauty of the area.

The construction of a meteorological station, regardless of its height, may have significant and site-specific aesthetic impacts upon its surroundings. However, given the temporary nature of these projects any aesthetic impacts will also be temporary. For example, projects under 200 feet in height will, in most cases, not require lighting pursuant to Federal Aviation Administration guidelines. In cases where the project will not exceed 200 feet and will not remain in place for more than three years, we conclude that any aesthetic impacts resulting from the project are likely to be minimal and, in any case, temporary. Therefore, establishing a rebuttable presumption of no undue adverse aesthetic impacts for these projects is appropriate. Projects taller than 200 feet and those that will remain in place for more than three years will not be granted this presumption. Persons with concerns regarding the aesthetic impacts of projects under 200 feet in height will still have an opportunity to rebut the presumption of no undue adverse impacts. In addition, we have added an aesthetic evaluation section based upon the

"Quechee Test" to the application form to provide guidance with respect to the Board's process for reviewing aesthetic impacts.

#### Submission of Comments

The draft Order sets forth the requirements for filing comments on a project application. REV and the DPS suggest that the Board clarify that comments should be limited to concerns regarding the meteorological station only and not a potential wind generation facility. We agree that additional guidance in this area will be useful and have, therefore, revised the Order and the Application accordingly.

#### Issuance of Decision

Pursuant to § 246(d), the Board is required to issue a proposal for decision on a project application within five months of receiving a completed application. REV argues that the Board should, in cases where the project does not raise any significant issues, issue a certificate of public good within 60 days of receiving a completed application because the decision "will be relatively easy to draft."

The Board agrees with REV that decisions on project applications where no significant issues have been identified will require little additional process and should be issued as soon as practicable. However, the Board receives many applications for approval of projects that do not raise significant issues and which may directly impact system stability and reliability. REV has not demonstrated why decisions on meteorological stations merit priority over other projects pending before the Board. Therefore, we decline to adopt this requirement.

#### Comment Period

The draft Order and Application require comments on an application be filed with the Board within 30 days of receipt. The Department points out that the application review process may require resubmission of incomplete or deficient applications. Therefore, the Department asks for clarification that the 30-day comment period refers to complete applications and that parties will be given an additional opportunity to comment in cases where the Board requires an

application to be resubmitted. We agree that this should be clarified and have amended the Order and Application accordingly.

#### Application, Section 3.1(b)

This section of the Application requires applicants to explain the project's relationship to the construction of a generation facility and provide a brief description of that facility. The Department argues that including a description of the future generation project in the application will be confusing and elicit comments on the potential future project. We agree that many commenters in these cases will likely focus on the potential future generation facility and not the project at hand. As discussed above, we have added additional guidance in this area to forestall these types of comments. However, we conclude it will be difficult to determine whether a meteorological station is reasonably related to a potential generation facility, and thus under our jurisdiction, without a description of that project, we have retained this section in the Application.

#### Application Section 3.3

This section of the application asks the applicant to describe the project's impacts, if any, with regard to aesthetics, historic sites, air and water purity, the natural environment, and public health and safety. The Department contends that because this section does not specify the level of detail or narrative expected from the applicant, it is unlikely to produce the information necessary for the Board to make findings on the applicable criteria.

We agree with the Department that this section should be further clarified. Therefore, we have revised this section to request detailed responses under each criterion. As discussed above, we have also included additional criteria under § 248(b) to the review criteria. In addition, we have included a description of the "Quechee" analysis to further guide applicants in addressing aesthetic impacts.

**Duration of CPGs**

Section 246(c)(2) provides that a CPG under this section be issued for no more than five years. The section also requires that, at the expiration of the CPG, the project and all associated equipment be removed and the site restored to preconstruction condition. The Department asserts that this information should be added to both the Order and the Application in order to notify the applicant of its obligations. We agree that advance notice will be useful in clarifying the applicant's future obligations and have revised the Order and Application accordingly.

**STANDARDS AND PROCEDURES**

**Purpose and Applicability:** The purpose of these standards and procedures is to implement 30 V.S.A. § 246. These standards and procedures are applicable to the proposed construction or installation of a temporary meteorological station.

**Definitions:** "Temporary meteorological station" means a temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions, constructed or installed in order to determine the suitability of a site for the location of a grid-connected wind turbine.

"Temporary Meteorological Station application form" means the current Board application form for temporary meteorological stations. From time to time the Board may modify or revise the application form.

**Notice Requirements:** The applicant must provide written notice, at least 30 days in advance of filing a Section 246 application, to the following entities:

- (a) legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
- (b) the Secretary of the Agency of Natural Resources;
- (c) the Department of Public Service;
- (d) the landowners of record of property, pursuant to the current municipal grand list, adjoining the property on which the project will be located; and
- (e) the Board.

The notice shall state that the applicant intends to submit a Section 246 application, identify the location of the temporary meteorological station site(s) and provide a description of the proposed project. In addition, the notice must contain sufficient detail about the proposed project to allow the parties receiving the notice to understand the impact of the project on the interests of those parties. The notice shall also state that recipients may file inquiries or comments with the applicant with respect to the project and that recipients will also have the opportunity to file comments with the Board once the application is filed.

**Environmental Criteria:** The applicant must address each of the criteria set forth in Section 3 of the application form. To the extent that the proposal will create an adverse impact affecting any of these criteria, the applicant should describe what measures, if any, will be taken to minimize such impact. All other criteria pursuant to Section 248(b) are conditionally waived.

**Filing Requirements:** Upon filing an original and three copies of the completed Temporary Meteorological Station application form with the Board, the applicant must also submit a copy of the completed application to the Agency of Natural Resources, the Department of Public Service, the legislative bodies and municipal and regional planning commissions of the towns where the project(s) will be located, and the landowners of record of property adjoining the project site.<sup>2</sup>

**Completed Applications:** Upon receiving an application under Section 246, Board staff will review the application for completeness. If the application does not substantially comply with the application requirements set forth herein, the Clerk of the Board will inform the applicant of the deficiencies. If an application is deemed incomplete, the Board may require the applicant to provide copies of the revised application to all parties entitled to receipt of the original application for additional comment. Upon submission of all information necessary to address the deficiencies, the Clerk of the Board shall notify the applicant that the filing is complete.

---

2. An electronic copy of the application form will be available on the Board's website at: <http://psb.vermont.gov/>.

**Submission of Comments and Requests for Hearing:** If any person wishes to submit comments to the Board concerning an application filed pursuant to § 246 or request a hearing, such correspondence is due at the Board within 30 calendar days of the date that the completed application was submitted to the Board and all required Parties.

**Issuance of Decision:** A proposal for decision regarding the application shall be issued within 5 months of its filing or, if the original filing was not complete, within 5 months of the date on which the Clerk of the Board notifies the applicant that the filing is complete. A Certificate of Public Good issued pursuant to § 246 shall be valid for a period of no more than five years.

**SO ORDERED.**

DATED at Montpelier, Vermont, this 9th day of March, 2010.

<u>s/ James Volz</u>	)	
	)	
	)	PUBLIC SERVICE
<u>s/ David C. Coen</u>	)	
	)	BOARD
	)	
	)	OF VERMONT
<u>s/ John D. Burke</u>	)	

OFFICE OF THE CLERK

Filed: March 9, 2010

Attest: s/ Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us).*